LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
SEP 10 1970
E. ROBERT SEAVER, CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, [redacted] 1970
No. 251

THE STATE OF CALIFORNIA, et al.,

Petitioner,

vs.

PAUL KERN IMBLER,

Respondent.

RESPONSE OF RESPONDENT PAUL KERN IMBLER

ROGER S. HANSON
6265 Lubao Avenue
Woodland Hills, California
782-2790 863-5365

Attorney for Respondent

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1969
No. ____

THE STATE OF
CALIFORNIA, et al.,

Petitioner,

vs.

PAUL KERN IMBLER,

Respondent.

RESPONSE OF RESPONDENT PAUL KERN IMBLER

ROGER S. HANSON
6265 Lubao Avenue
Woodland Hills, California
782-2790 863-5365

Attorney for Respondent

TOPICAL INDEX

	Page
Table of Authorities	iii
STATEMENT OF THE CASE	2
RESPONSE TO QUESTIONS PRESENTED	3
RESPONSIVE ISSUES	5
I THE PERJURED TESTIMONY OF PROSECUTION WITNESS ALFRED COSTELLO	5
A. THE ISSUE OF VIEWING PRE-LINEUP PHOTOGRAPHS	7
B. THE ISSUE OF THE PERJURED EDUCATIONAL ATTAINMENTS OF ALFRED COSTELLO, AND THE FAILURE TO CORRECT SAME BY USE OF THE "MAKE-SHEET" IN POSSESSION OF THE DISTRICT ATTORNEY.	11

C. THE ISSUE OF THE PERJURED TESTIMONY RE COMMITMENT OF ALFRED COSTELLO TO STATE MENTAL HOSPITALS. 14

D. THE ISSUE OF THE PERJURED TESTIMONY REGARDING THE NUMBER OF FELONY CONVICTIONS SUFFERED BY ALFRED COSTELLO AND THE FAILURE TO CORRECT SAME BY USE OF THE "MAKE-SHEET" IN POSSESSION OF THE DISTRICT ATTORNEY. 16

II THE ISSUE OF THE SUPPRESSED FINGERPRINT. 18

III OTHER ISSUES UPON WHICH THE FEDERAL WRIT WAS ISSUED. 20

CONCLUSIONS 20

TABLE OF AUTHORITIES

Cases	Page
Chapman v. California 386 U.S. 18	21, 22, 23
In re Imbler (1953), 60 Cal. 2d 554, 35 Cal. Rptr. 293	3, 5, 6, 7, 8, 11, 13, 16, 17, 18, 21, 25
In re Imbler (1964), 61 Cal. 2d 556	21, 25
Imbler v. Craven, 298 F. Supp. 795	1, 3, 26
Miller v. Pate, 386 U.S. 1, ___ L. Ed. 2d, ___ S. Ct. ___	26
Napue v. Illinois, 360 U.S. 264, ___ L. Ed. 2d, ___ S. Ct. ___	9, 23, 24
People v. Paul Kern Imbler, 57 Cal. 2d 711	2, 21, 24
People v. Savvides, 1 N.Y. 2d 554, 136 N.E. 2d 853 154 N.Y.S. 2d 885	24

People v. Watson,
46 Cal. 2d___ 22

Constitution

Federal Constitutional Law
Amendment XIV 10

Statutes

U.S. Code Title 28,
Section 2254, subsection 8 10

U.S. Code Title 28,
Section 2254 (d) 19

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1969
No. _____

THE STATE OF
CALIFORNIA, et al.,

Petitioner,

vs.

PAUL KERN IMBLER,

Respondent.

RESPONSE OF RESPONDENT PAUL KERN IMBLER

Response to Petition for Certiorari, affirming the decision of the United States District Court for the Central District of California, Los Angeles, California, Honorable Warren J. Ferguson, United States District Judge, Imbler v. Craven, 298 F. Supp. 795, to the United States Court of Appeals for the Ninth Circuit, San Francisco, California.

TO THE HONORABLE WARREN EARL BURGER, CHIEF JUSTICE OF THE UNITED STATES, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

Comes now the Respondent Paul Kern Imbler by his attorney, Roger S. Hanson, of Woodland Hills, California 91364, member of the Bar of the Supreme Court of the United States, and the Supreme Court of California, and responds to the Petitioner State of California by its Attorney General, Thomas C. Lynch, Esquire, by Albert Harris, Esquire, as follows:

STATEMENT OF THE CASE

The respondent Paul Kern Imbler was tried and convicted of murder and assault with intent to commit murder in January, 1961 by the Superior Court of Los Angeles County, Honorable Mark Brandler, Judge. The conviction was affirmed unanimously by the Supreme Court of California, People v. Paul Kern Imbler, 57 Cal. 2d 711 (1962).

The chief eyewitness against Paul Kern Imbler, was one Alfred J. Costello who also used several alias. Two additional eye witnesses were Bill Hillen and Alonzo Dunlap. No physical evidence linked Paul Kern Imbler

to the crime save the three aforementioned eyewitnesses.

During the initial trial, Costello, Hillen and Dunlap all testified that Imbler carried out the crime.

Imbler testified in his own behalf and supplied alibi testimony in the way of defense.

A fourth eyewitness, James Fritz, was not produced by the State. Costello testified at the reference hearing that Fritz would not identify Imbler at the lineup. Mrs. Hasson, the widow of the victim, was present at the shooting. She also could not identify Imbler as the murderer.

After the shooting, Fritz was in constant contact with the police who furnished Fritz money to go on the street and see if he could spot the killer. He assisted the police artist in making the composite sketch and was helpful in many other ways. After he refused to identify Imbler at the lineup he vanished into thin air and extensive efforts on the part of the defendant have failed to locate him.

In the final analysis it was the word of Paul Kern Imbler versus that of three out of five eyewitnesses.

Recognizing, therefore, that any testimony that would undermine the eyewitness identification of Paul Kern Imbler, would concomitantly undermine the case of the prosecution certain matters transpired at trial and are herewith made responsive issues in the response brief of Paul Kern Imbler. These issues are fully and accurately covered in Imbler v. Craven (1969), 298 F. Supp. 795; the counterparts are set forth in In re Imbler (1963), 60 Cal. 2d 554, by then Justice Roger J. Traynor of the Supreme Court of California.

RESPONSE TO QUESTIONS PRESENTED

At pages 2-4 of his Petition for Writ of Certiorari, the California Attorney General

cumulatively suggests that the federal district judge must be bound by factual determinations made by a state court, and that in the instant case, the federal court made "contrary" factual determinations; that the Ninth Circuit Court of Appeals erred in affirming the district court; that the federal district court erred in finding due process of law deprivation in certain "minor" matters which "could not, in the opinion of the State Attorney General, have changed the verdict."

In the Responsive Issues set forth infra, respondent Paul Kern Imbler, by his Counsel Roger S. Hanson, refutes the allegations of the State's Attorney and alleges that no such thing occurred in the manner of factual redetermination.

It is regrettable that this Honorable Court can not peruse verbatim the some 2000 pages of transcript, for obviously only salient excerpts are herewith submitted, but it is stated without fear of contradiction that the Federal Opinion in this case, 298 F. Supp. 795 was rendered only after meticulous and painstaking investigation into the facts and law, and only following two solid days of oral argument in the United States District Court in Los Angeles before United States District Judge Warren J. Ferguson.

The opinion found at 298 F. Supp. 795 accurately reflects the facts and properly applies the constitutional law of this nation.

Following the discussion of the Responsive Issues infra, respondent concludes with the firm belief and prayerful request that the petition of the State of California should be summarily denied.

RESPONSIVE ISSUES

I

THE PERJURED TESTIMONY OF PROSECUTION WITNESS ALFRED COSTELLO

It is to be noted that the California Supreme Court set forth the facts that a party must establish who seeks to have a conviction set aside for the knowing use of perjured testimony on the part of the State of California. At 560 of 60 Cal. 2d 554, In re Imbler, Justice Traynor, later Chief Justice Traynor stated:

> "A judgment of conviction based on testimony known by representatives of the state to be perjured deprives the defendant of due process of law . . . and

may be attacked on habeas corpus. In making such an attack, however, petitioner must establish by a preponderance of the evidence that perjured testimony was adduced at his trial, that representatives of the State knew that it was perjured, and that such testimony may have affected the outcome of the trial."

The California Supreme Court in its opinion In re Imbler, 60 Cal. 2d 554, 561, admits that the Los Angeles Police Department had knowledge of the phony checks passed on several occasions by their star witness Costello, and of his previous manifold convictions for issuing said checks.

The California Supreme Court in its opinion In re Imbler (1963), 60 Cal. 2d 554, 561-2, restricted its scrutiny of prosecution witness Costello to whether "he, Costello, testified at Imbler's trial contrary to his (Costello's) belief at that time." The California high court then examined several contentions of Costello that he testified falsely because of threats by the prosecution that he would be tried for bad check charges; that he, Costello, had expressed doubt about Imbler's guilt to various law enforcement agencies and Superior Court judges. The California Supreme Court then noted that Costello's testimony had been refuted by a

multitude of State witnesses regarding the threats of prosecution of Costello and as to Costello having expressed doubts to the various officials regarding Imbler's guilt. (60 Cal. 2d 554, 561-2.)

A. THE ISSUE OF VIEWING PRE-LINEUP PHOTOGRAPHS

The California high court in its opinion In re Imbler (1963), 60 Cal. 2d 554, 562-3, discusses the issue of whether Costello perjured himself when questioned about seeing photographs of Imbler before Costello viewed the police line-up. Costello at trial denied during trial cross examination that he had seen mug shots of Imbler before the lineup; after further questioning, Costello stated that he was "not positive, but certain" that he had seen mug shots of Imbler in a mug book before the lineup. At the evidentiary hearing, Costello claimed the police showed Imbler's picture to him several times before he helped a police artist draw a composite of the killer.

The California high court dismissed the "pre-lineup photo issue" as merely one of "confusion" on the part of Costello, and not necessarily perjury.

The California high court, however, admits at 562-563 in its opinion in [illegible] (1963), 60 Cal. 2d 554 that:

> "The investigating police officer (who was at all times in the court room during Imbler's murder trial) admitted at the reference (evidentiary) hearing that he showed the photograph of [Imbler] from the Los Angeles Police Department files prior to all of the witnesses before the lineup . . . ."

While the California high court dismissed the acts of the State as merely ignoring "confusion" of Alfred Costello, apparently finding no obligation of the prosecution to correct the false testimony of Costello, the United States District Court found an obligation on the part of the prosecution and his ever-present-in-the-courtroom investigator to correct this false testimony and the prosecutor failed to do so. [See pages 8 and 9, III of Appendix A, Opinion of United States District Judge Warren J. Ferguson, supplied with the Petition for Certiorari to this Honorable Court].

Thus, the Federal law enunciated by the United States District Court and applied to the unchanged factual situation found by

obligation on the part of the State to correct the false testimony of Costello regarding the pre-lineup photos. It is undisputed that the State failed to correct Costello's testimony.

It is therefore seen that while the California Supreme Court merely as a matter of state law was content to allow a "confused" Costello to deny seeing pre-lineup photos of Imbler, the Federal Court found a constitutional obligation on the part of the prosecutor and his police investigator agent to correct this false testimony whether it was introduced intentionally by Costello or only because Costello was "confused."

That is a major difference in state law versus federal due process requirements; and in no way changes any facts!!

(Likewise re prosecution witness Billy Hillen on the same subject; see pp. 9-10, Appendix A of the California Petition to this Court, citing the Opinion of United States District Judge Warren J. Ferguson.) It is interesting to note that the California Supreme Court Opinion fails to even mention the perjured testimony and the failure to correct same on the part of prosecution witness Billy Hillen. The Federal District Court Opinion thus properly developed this deprivation of Due Process of Law (under Napue v. Illinois, 360 U.S. 264) at page 9 and 10, Appendix "A" of the California

Petition for Certiorari, within the meaning of Title 28, Section 2254, subsection 8, U.S. Code.

The State High Court Opinion failed to adequately cover and develop major additional errors. The United States District Court subsequently covered this material and now the State Attorney General is trying to claim that the Federal Court "changed facts." The Federal Court changed nothing.

If the State Court chooses to ignore major facts, resulting in a denial of Due Process under the XIV Amendment, the Federal Court is under an obligation to correct this error, applying Federal Constitutional Law. This the Federal Court admirably did re the false testimony of witness Hillen (see pp. 9-10, Appendix "A", Opinion of U.S. District Court, set forth verbatim in California's Petition for Certiorari) and the failure of the state to correct same when it came before the jury.

B. THE ISSUE OF THE PERJURED EDUCATIONAL ATTAINMENTS OF ALFRED COSTELLO, AND THE FAILURE TO CORRECT SAME BY USE OF THE "MAKE-SHEET" IN POSSESSION OF THE DISTRICT ATTORNEY.

In its opinion In re Imbler, 60 Cal. 2d 554, the California Supreme Court ruled that the rehabilitation of prosecution witness Costello before the jury by asking Costello questions as to his "college education" was "material and could have probably affected the outcome of the trial by making Costello a more believable witness." The California high court ruled that Imbler failed to prove that the State knew that Costello was lying when Costello testified before the jury that he, Costello, had:

1. graduated from the University of California, obtaining a four year bachelor's degree in one-half that time;

2. had subsequently graduated from the University of Southern California in 1954 via "night school" attendance, graduating with an "Engineers Degree" in a totally different academic discipline.

At the reference hearing, the prosecuting attorney denied knowledge of Costello's lies about his educational attainments, although it was undisputed that the prosecution had before it at all times Costello's "make-sheet" showing that he was continuously incarcerated for two and one half years from May of 1951 through November of 1953 at San Quentin Prison and that he was in and out of State Insane Asylums continuously during the years 1946 through 1949 (see page 15, Appendix A of California Petition for Certiorari). The State Supreme Court apparently as a matter of state law, looked only to actual disavowance of the knowledge of Costello's lies by the prosecutor to alleviate the State from this error; the State Supreme Court "excused" the prosecutor from his failure to recognize the "make-sheet" by charging Imbler with the same knowledge since Imbler's appointed public defender had the same "make-sheet!!!" Thus the State Supreme Court alluded to the "sporting nature" of the trial, at least inferentially, to excuse the State and its prosecutor. The Federal court, however, charged the prosecution with knowledge of the "make-sheet" as a matter of federal standard, and found no circumvention to the onus of the State by charging the appointed defense attorney with the same knowledge.

Again, no questions or issues of fact have here been changed; indeed, it is merely applying more vigorous federal law standards to undisputed facts.

While disavowance of knowledge of the falsity of Costello's educational attainments in view of his mental asylum incarceration from 1946 through 1949 and his prison sentence from May of 1951 through November of 1953 stretches credulity and one's imagination to the breaking point when one recalls that the claimed Engineers Degree was conferred in 1954 from the University of Southern California, it is clear that the Federal Court did not base the Issuance of the Writ of Habeas Corpus on "changed facts;" it properly applied more vigorous and demanding canons of Federal law in contrast to those employed by the State high court.

(Please read 60 Cal. 2d 554, In re Imbler, 35 Cal. Rptr. 293, 298-299, especially footnotes 2 and 3, page 299 and compare same with pages 13-18 of Appendix A, California Petition for Certiorari.)

The State high court says simply,

> "The prosecutor had no reason to disbelieve this information, (about the two university degrees) which was first given to him during the course of the trial, and he had no duty to verify it before using it to rehabilitate his witness."
> (P. 299 of 35 Cal. Rptr. 293.)

Surely it must here be recognized that the above is not a "factual determination." It bespeaks of "duty," which is a standard of state law. The fact that the United States District Court imposed a higher [illegible] federal judicial canons, is [illegible] point of view of the prosecution and [illegible] of California, but surely no findings of fact have been altered by the Federal Court vis-a-vis the findings of fact by the Supreme Court of California.

C. THE ISSUE OF THE PERJURED TESTIMONY AS TO COMMITMENT OF PETITIONER COSTELLO TO STATE MENTAL HOSPITALS.

The California Supreme Court ignored this perjured testimony of the state prosecution witness as a state of Costello's being "made up." The State high court suggests that Costello apparently only meant that he "voluntarily" pleaded not guilty by reason of insanity vis-a-vis the stated-to-the-jury that he "voluntarily" committed himself to the state asylum.

Thus, reasons the State High Court, Costello did not "commit perjury."

Again, it must be called to the attention of this High Court and the petitioner's

California that the above determination was not major basis for the United States District Court's ruling regarding the "insane asylum issue;" the Federal Court took cognizance of the prosecutor's admission at the reference hearing that he, the prosecutor, realized that the committing to the mental hospital was the result of a "not guilty by reason of insanity" plea in a felony case; that Costello felt it was "voluntary," and that the prosecutor declined to correct the testimony and bring out the truth.

At page 12 Appendix A of the California Petition for prosecutor is quoted:

> "Mr. Costello told me that he was voluntarily committed. He gave me the reasons why he thought it was a voluntary commitment. Rather than argue with him, I just accepted his own wording by his statement that he pleaded not guilty to - by reason of insanity and was - furnished certain answers by the Public Defender. In his mind, he thought it was a voluntary commitment. I wasn't going to argue with him. Let him explain it to the jury. The jury could make the decision. That was my attitude."

However, as correctly ascertained by Judge Warren J. Ferguson,

"The one fact, however, which he (the prosecutor) had, and which the jury did not, was that the commitment was not voluntary."
(Page 25, Appendix A of the California Petition for Certiorari.)

Thus, again, the Federal Court has not redecided "issues of fact;" it has properly applied federal constitutional law to undisputed facts in the case of Paul Kern Imbler. (See pages 10-12, Appendix A, California Petition for Certiorari; and compare with footnote 3, 60 Cal. 2d 554, 35 Cal. Rptr. 293, 299-300.)

D. THE ISSUE OF THE PERJURED TESTIMONY REGARDING THE NUMBER OF FELONY CONVICTIONS SUFFERED BY ALFRED COSTELLO AND THE FAILURE TO CORRECT SAME BY USE OF THE "MAKE-SHEET" IN POSSESSION OF THE DISTRICT ATTORNEY.

Here the California Supreme Court again relies on the failure of Imbler to prove knowledge of the falsity; see pages 298-299 of 35 Cal. Rptr. 293, 60 Cal. 2d 554.

However, it again must be stated that the United States District Court charged the

prosecution with knowledge of the "make-sheet" as a matter of federal standards of law; that if the prosecution made use of the "make-sheet" for certain purposes, it was to be held responsible for the entire "make-sheet," and could not obviate its constitutional obligation by declining knowledge. This is not a factual determination, but is an issue of law, and this respondent questions where any "facts" have been changed. The facts were and still are that both the prosecuting attorney and the assigned public defender had access to the "rap sheet" of Costello. State law devolved upon the "sporting theory of the case."'

At page 299 of 35 Cal. Rptr. 293, the Supreme Court via Justice Traynor states:

> "The referee found, however, that petitioner's counsel had the same 'make-sheet' in his possession during the trial, yet failed to use it to correct the false testimony. If the prosecutor is to be charged with knowledge of the contents of the 'make-sheet,' so must petitioner."

The above is apparently California standards of State Law; federal law enunciated by Judge Warren Ferguson, 298 F. Supp. 795, is more vigorous. No questions of fact have been altered, only the appropriate standard has been invoked. (See page 27, Appendix A

of the California Petition for Certiorari, and following on page 28.)

II

THE ISSUE OF THE SUPPRESSED FINGERPRINT.

The California Supreme Court treats this issue commencing at page 300 of 35 Cal. Rptr. 293, 60 Cal. 2d 554.

The State high court asserts that Imbler failed to prove that the State fingerprint expert wilfully gave false testimony.

The State high court excuses the "error" as "an honest error in expert opinion;" that even if the expert were "negligent," his negligence did not deprive Imbler of a fair trial. The California court stressed the fact that Imbler could have had the razor case examined by "his own expert" during trial and did not have to rely on the word of the prosecution.

It must be recalled, however, that the prosecution expert testified under oath that the fingerprints were too fragmentary to allow identification of anyone at all.

The prosecution neglected to reveal however, that the police log book showed that

the fingerprints had been compared to several potential suspects to see if a match could be obtained, thus indicating that indeed more than "fragments" existed.

In addition, it is to be noted that the prosecution had available to it, circled by a blue pencil that full complete third fingerprint, not that of Imbler, and had taken and magnified photographs of that print which were available but were not produced at trial. See V, pages 33-37, Appendix A, and III pages 45-46 of Appendix B, California Petition.

It is true that the Federal court found that evidence of the third fingerprint was "suppressed" whereas the State court found this to be "honest error," but it is of course true that if the Federal court does not find factual support in the record for state conclusions, it may examine de novo the record and decide anew under Title 28, Section 2254 (d). That was here done, and was affirmed by the two Opinions of the Ninth Circuit Court of Appeals (see Appendix C and D, pages 47-50 of the California Petition for Certiorari).

II

OTHER ISSUES UPON WHICH THE FEDERAL WRIT WAS ISSUED.

The State of California has graciously provided this court in Appendices A, B, C and D, copies of all four federal opinions.

The other issues upon which United States District Judge Warren J. Ferguson based the grant of a writ of habeas corpus are clearly, succinctly and adequately set forth therein. It would provide no great additive information to augment the opinions of the Federal courts herewith.

Suffice it to say, however, no facts were redecided, only appropriate federal principles were applied.

CONCLUSIONS

In his Petition for Certiorari, the Attorney General of California raises in this court the same issues he raised, unsuccessfully and erroneously, in the Ninth Circuit Court of Appeals, and in general the issues centered about a single theme, viz:

"That the California Supreme Court had decided certain factual issues, and that the United States District Court redecided and changed these findings on factual issues, this time adversely to California and in favor of Imbler."

The petition of the State of California thus misses the thrust of the opinion of the United States District Court. Indeed, no factual issues were redecided; in fact, applicable Federal law and the Federal harmless error rule of Chapman v. California (1967), 386 U.S. 18, 24 were, for the first time, applied to the case of Paul Kern Imbler.

In all due respect to the Supreme Court of the State of California, it must be recognized that the three opinions rendered by the California high court (57 Cal. 2d 711, 60 Cal. 2d 554, 61 Cal. 2d 556) all preceded the Chapman rule enunciation of 1967; but on the other hand, it must be admitted by the petitioner State of California that the scope of the inquiry into the conviction of Paul Kern Imbler was restricted by the California high court as is set forth by petitioner in the four questions listed at page 10 of his petition; and it must likewise be acknowledged by the State of California that former Associate Justice Thomas White, who was the appointed referee at the evidentiary hearing ordered by

the State Supreme Court failed to determine and rule upon a significant number of issues of fact and mixed issues of fact - law which the United States District Court ultimately ruled upon and then applied Federal Constitutional principles of law to these findings of fact - law. Of course, the Chapman-California standards, 386 U.S. 18, 24 were then applied to the issues of fact - law which were determined by the United States District Court.

It is therefore respectfully submitted that the United States District Court has taken as fixed and unalterable the findings of fact of the Supreme Court of California; it has applied Federal Constitutional law to these findings of fact where the California high court either failed to apply any harmless error standards or applied the State harmless error standards of People v. Watson, 46 Cal. 2d ___; and of salient importance the United States District Court has adjudicated on certain factual issues developed at the trial and at the subsequent evidentiary hearing which affected the judgment and which the Supreme Court of California simply failed to rule upon.

It is thus submitted in support of a request to deny the Petition for Certiorari that the contentions set forth by the Attorney General in his petition at pages 2 through 4 in fact did not occur, and were not the basis

for the granting of the Writ of Habeas Corpus by the United States District Court in Los Angeles, the Honorable Warren J. Ferguson, United States District Judge.

It is significant that the Petition for Writ of Certiorari submitted by the Attorney General of California totally ignores the major national body of law set forth and relied upon by the United States District Court in its opinion set forth at Appendix A in the petition of California to this court.

It is significant that nowhere in the petition submitted by California does the Federal harmless error rule of Chapman v. California (1967), 386 U.S. 18, 24 appear.

It is significant that the California petition fails to cite the decision of this United States Supreme Court in Napue v. Illinois (1959), 360 U.S. 264, 269, ____ L. Ed. 2d ___, ___ S. Ct. ____, where Chief Justice Earl Warren stated:

> "The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness.

> The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence . . . ."

This Honorable Court cited in Napue, supra, the following excerpt from People v. Savvides, 1 N. Y. 2d 554, 557, 136 N. E. 2d 853, 854-55, 154 N. Y. S. 2d 885, 887:

> "It is of no consequence that the falsehood bore upon the witness' credibility rather than directly upon defendant's guilt. A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, THE DISTRICT ATTORNEY HAS THE RESPONSIBILITY AND DUTY TO CORRECT WHAT HE KNOWS TO BE FALSE AND ELICIT THE TRUTH."

Thus the respondent Paul Kern Imbler, via his counsel, Roger S. Hanson, respectfully requests this Honorable United States Supreme Court to read the following Supreme Court of California opinions in the respondent's case:

> People v. Imbler (1962), 57 Cal. 2d 711;

In re Imbler (1963),
60 Cal. 2d. 554;

In re Imbler (1964),
61 Cal. 2d 556;

further, respondent prays that diligent scrutiny be given Appendices A, B, C, D, and E, of the petitioner State of California's document for Certiorari.

Contained within the opinion of the Honorable Warren J. Ferguson, United States District Judge, 298 F. Supp. 795, as set forth in Appendix A, is the Federal Constitutional Law applicable to this case. It is factually accurate, national in scope and is drawn from the opinions of the United States Supreme Court and the various circuit courts of appeal selected from a large number of the eleven circuits.

The authority presented in the opinion of the United States District Court uniformly condemns the behavior of the prosecutoral authority of the County of Los Angeles which was utilized to convict Paul Kern Imbler; instead of petitioning the highest court in the land for succor to ameliorate and palliate its behavior, the State of California should hang its head in shame over the case of Paul Kern Imbler.

With every condemnation present in Miller v. Pate (1967), 386 U.S. 1, ___ L. Ed.

2d ___ , ___ S. Ct. ___ , the case of Paul Kern Imbler is long overdue for relief.

It is respectfully and prayerfully asked that the High Court of the United States deny the petition for Certiorari of the State of California in the case of Imbler v. Cty. etc. once again repudiating the shameful action promulgated by the prosecution in this case of now some ten years duration.

Respectfully submitted,

ROGER S. HANSON

Attorney at Law
Attorney for Respondent

Member of the Bar,
Supreme Court of the
United States
Supreme Court of California
Supreme Court of Illinois
Supreme Court of Michigan
Supreme Court of Iowa